

James V. Phelps, (CA SBN 248664)  
5837 Dunsmuir Avenue  
PO BOX 721  
Dunsmuir, California 96025  
Tel: (530) 235-4911  
Fax: (530) 235-4922  
Email: james@viraxay.com

Attorney for Debtors: DON & SENGTHONG PHELPS

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

In re:

DON PHELPS;  
SENGTHONG PHELPS;

Debtors.

Case No. 09-47970-B-7

D.C. No. JVP-001

**NOTICE OF MOTION RE: MOTION TO  
COMPEL CHAPTER 7 TRUSTEE TO  
ABANDON BUSINESS**

DATE : 04/06/10

TIME : 9:30 A.M.

DEPT : B, Courtroom 32, 6<sup>th</sup> Floor

LOC : 501 I Street, Sacramento, CA

JUDGE: Holman

**NOTICE OF MOTION RE: MOTION TO COMPEL CHAPTER 7 TRUSTEE TO  
ABANDON BUSINESS**

Please take notice that on April 6, 2010 at 9:30AM or as soon as the matter may be heard before the Honorable Judge HOLMAN, of the above-entitled court, located at 501 "I" Street, Sacramento, CA 95814, movant will move this court for an ORDER TO COMPEL CHAPTER 7 TRUSTEE TO ABANDON BUSINESS, a copy of which has been filed concurrently with this Notice.

Pursuant to Local Bankruptcy Rule 9014-1(f)(1), opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at

1 least fourteen (14) calendar days preceding the date or continued date of the hearing. Opposition  
2 shall be accompanied by evidence establishing its factual allegations. Without good cause, no  
3 party shall be heard in opposition to a motion at oral argument if written opposition to the motion  
4 has not been timely filed. Failure of the responding party to timely file written opposition may be  
5 deemed a waiver of any opposition to the granting of the motion or may result in the imposition  
6 of sanctions.

7         The opposition shall specify whether the responding party consents to the Court's  
8 resolution of disputed material factual issues pursuant to FRCivP 43(e) as made applicable by  
9 FRBP 9017. If the responding party does not so consent, the opposition shall include a separate  
10 statement identifying each disputed material factual issue. The separate statement shall  
11 enumerate discretely each of the disputed material factual issues and cite the particular portions  
12 of the record demonstrating that a factual issue is both material and in dispute. Failure to file the  
13 separate statement shall be construed as consent to resolution of the motion and all disputed  
14 material factual issues pursuant to FRCivP 43(e).

15  
16  
17 Dated: February 22, 2010

By: /s/ James Phelps

18 JAMES V. PHELPS,  
19 ATTORNEY FOR DEBTORS  
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In re:

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Debtors.

**Case No. 09-47970-B-7**

**D.C. No. JVP-001**

**MOTION TO COMPEL CHAPTER 7  
TRUSTEE TO ABANDON BUSINESS**

DATE : 04/06/10

TIME : 9:30 A.M.

DEPT : B, Courtroom 32, 6<sup>th</sup> Floor

LOC : 501 I Street, Sacramento, CA

JUDGE: Holman

**MOTION TO COMPEL CHAPTER 7 TRUSTEE TO ABANDON BUSINESS**

Debtors hereby move this Court for an Order compelling the Chapter 7 Trustee to abandon debtors' business, commonly known as SENGTHONG'S RESTAURANT.

The basis of this motion is that the business, per se, is of nominal or no value, and it is counter to the interests of the bankruptcy estate to be burdened with the potential liability associated with the continued operation of the business during the bankruptcy period. As shown on debtors' petition and schedules, tools of trade and equipment are of modest value, and have been fully exempted. The conduct of the business by debtor merely provides for debtors' "wages", and the ability of the debtors to continue to earn a living in this manner is wholly

1 consistent with the concept of providing the debtors with a fresh start. As shown in debtors'  
2 petitions and schedules, the relief requested would not impede creditors' rights and would enable  
3 the Chapter 7 Trustee to satisfy concerns as to potential liability.  
4

5  
6 Respectfully Submitted,  
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8 Dated: February 22, 2010

9 By: /s/ James Phelps  
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11 JAMES V. PHELPS,  
12 ATTORNEY FOR DEBTORS  
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Attorney for Debtors: DON & SENGTHONG PHELPS

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

In re:

DON PHELPS;  
SENGTHONG PHELPS;

Debtors.

**Case No. 09-47970-B-7**

**D.C. No. JVP-001**

**DEBTOR'S DECLARATION RE:  
MOTION TO COMPEL CHAPTER 7  
TRUSTEE TO ABANDON BUSINESS**

DATE : 04/06/10

TIME : 9:30 A.M.

DEPT : B, Courtroom 32, 6<sup>th</sup> Floor

LOC : 501 I Street, Sacramento, CA

JUDGE: Holman

**DEBTOR'S DECLARATION RE: MOTION TO COMPEL CHAPTER 7 TRUSTEE TO  
ABANDON BUSINESS**

I, DON PHELPS, am a Debtor in the above referenced bankruptcy case.

I declare the following:

- 1) As shown in the filed petition and schedules, all tools of trade and equipment are of modest values and have been fully exempted.
- 2) The conduct of the business known as SENGTHONG'S RESTAURANT merely provides wages and the ability to continue to earn a living in this manner wholly consistent with the concept of providing a fresh start.

1           3) As shown in the filed petition and schedules, the relief requested would not impede  
2           creditors' rights and would enable the Chapter 7 Trustee to satisfy concerns as to  
3           potential liability.  
4

5 I declare under penalty of perjury that the foregoing is true and correct.  
6

7 Dated: February 22, 2010

By: /s/ Don Phelps

8 DON PHELPS, DEBTOR  
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Attorney for Debtors: DON & SENGTHONG PHELPS

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

In re:

DON PHELPS;  
SENGTHONG PHELPS;

Debtors.

**Case No. 09-47970-B-7**

**D.C. No. JVP-001**

**DEBTOR'S DECLARATION RE:  
MOTION TO COMPEL CHAPTER 7  
TRUSTEE TO ABANDON BUSINESS**

DATE : 04/06/10

TIME : 9:30 A.M.

DEPT : B, Courtroom 32, 6<sup>th</sup> Floor

LOC : 501 I Street, Sacramento, CA

JUDGE: Holman

**DEBTOR'S DECLARATION RE: MOTION TO COMPEL CHAPTER 7 TRUSTEE TO  
ABANDON BUSINESS**

I, SENGTHONG PHELPS, am a Debtor in the above referenced bankruptcy case.

I declare the following:

- 1) As shown in the filed petition and schedules, all tools of trade and equipment are of modest values and have been fully exempted.
- 2) The conduct of the business known as SENGTHONG'S RESTAURANT merely provides wages and the ability to continue to earn a living in this manner wholly consistent with the concept of providing a fresh start.

1           3) As shown in the filed petition and schedules, the relief requested would not impede  
2           creditors' rights and would enable the Chapter 7 Trustee to satisfy concerns as to  
3           potential liability.  
4

5 I declare under penalty of perjury that the foregoing is true and correct.  
6

7 Dated: February 22, 2010

By: /s/ Sengthong Phelps

8 SENGTHONG PHELPS, DEBTOR  
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Attorney for Debtors: DON & SENGTHONG PHELPS

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

In re:

DON PHELPS;  
SENGTHONG PHELPS;

Debtors.

Case No. 09-47970-B-7

D.C. No. JVP-001

STIPULATION BY DEBTOR AND  
TRUSTEE TO DEBTORS' MOTION TO  
COMPEL CHAPTER 7 TRUSTEE TO  
ABANDON BUSINESS

DATE : 03/16/10

TIME : 9:30 A.M.

DEPT : B, Courtroom 32, 6<sup>th</sup> Floor

LOC : 501 I Street, Sacramento, CA

JUDGE: Holman

STIPULATION BY DEBTORS AND TRUSTEE TO DEBTORS' MOTION TO COMPEL  
CHAPTER 7 TRUSTEE TO ABANDON BUSINESS

THE ABOVE NAMED DEBTORS, THROUGH THEIR ATTORNEY, AND THE  
CHAPTER 7 TRUSTEE, HEREBY AGREE AND STIPULATE TO THE FOLLOWING:

- 1) That the Debtors shall file with the Court a Motion to Compel Chapter 7 Trustee to  
Abandon Business.
- 2) That as shown in the filed petition and schedules, all tools of trade and equipment of  
modest values have been fully exempted.



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Attorney for Debtors: DON & SENGTHONG PHELPS

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

In re:

DON PHELPS;  
SENGTHONG PHELPS;

Debtors.

**Case No. 09-47970-B-7**

**D.C. No. JVP-001**

**CERTIFICATE OF SERVICE**

DATE : 04/06/10

TIME : 9:30 A.M.

DEPT : B, Courtroom 32, 6<sup>th</sup> Floor

LOC : 501 I Street, Sacramento, CA

JUDGE: Holman

**CERTIFICATE OF SERVICE**

I, JAMES V. PHELPS, declare that I am employed in the County of Siskiyou, California, that I am over the age of eighteen, and that I am not a party to the within cause. My business address is 5837 Dunsmuir Avenue, Dunsmuir, CA 96025. I am familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and that the document referred to below would be deposited with the United States Postal Service the date set forth below in the ordinary course of business.

On February 22, 2010, I served MOTION and NOTICE OF MOTION TO COMPEL CHAPTER 7 TRUSTEE TO ABANDON BUSINESS and DEBTORS DECLARATIONS and

1 STIPULATION BY DEBTOR AND TRUSTEE by placing a true and correct copy thereof  
2 enclosed in a sealed envelope placed for collection and mailing on the above date following  
3 ordinary business practices, with postage thereon fully prepaid, at Dunsmuir, California,  
4 addressed as follows:

5  
6 Linda Schuette  
7 Bankruptcy Trustee  
8 PO BOX 743  
9 Palo Cedro, CA 96073

10 US Bankruptcy Court  
11 Office of the US Trustee  
12 501 I Street, Ste 7-500  
13 Sacramento, CA 95814

14 Paul J. Dutra  
15 DUTRA & OATES  
16 2377 Gold Meadow Way, Ste 215  
17 Gold River, CA 95670

18 AAA Card Bankruptcy  
19 PO BOX 15298  
20 Wilmington, DE 19850

21 Bill Malin  
22 29 Mizzen Lane  
23 Salem, SC 29672

24 City of Dunsmuir  
25 Finance Director  
26 5915 Dunsmuir Ave  
27 Dunsmuir, CA 96025

28 Denise Fairhurst  
3341 Sacramento Drive  
Redding, CA 96001

Discover Card Bankruptcy  
PO BOX 30421  
Salt Lake City, UT 84130

PNC Mortgage Bankruptcy  
PO BOX 54828

1 Los Angeles, CA 90054

2 Premierwest Bankruptcy  
3 PO BOX 40  
4 Medford, OR 97501

5 Russell Gustafson  
6 1001 Maple Street  
7 Yreka, CA 96097

8 United Mileage Bankruptcy  
9 PO BOX 94014  
10 Palatine, IL 60094

11 Wanichipol Wannakeree  
12 4319 Stage Coach Road  
13 Dunsmuir, CA 96025

14 Wells Fargo Bankruptcy  
15 PO BOX 348750  
16 Sacramento, CA 95834

17 William Clement  
18 6586 Jojoba Drive  
19 Mohave Valley, AZ 86440

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Dated: February 22, 2010

23 By: /s/ James Phelps

24 JAMES V. PHELPS,  
25 ATTORNEY FOR DEBTORS  
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